(Testimony of C. A. Wirth.)

Q. What kind of cases were they?

A. Wooden cases in good condition.

Q. What markings were on the crates or cases, if you know?

A. Various markings. Some cases, as far as my examination permitted, I could find no marking on; some of the cases, that is, except lot numbers, or except that No. 3737 which was on all cases that I examined. Some of the cases had the word "Medium" in approximately—evidently put on with a stencil or rubber stamp, approximately an inch in height. Other cases had "Medium" on in smaller letters. On some cases there was a stamp that stated, "Nye & Nissen"—I have it on another memorandum, a complete statement on that, this lot.

Mr. Faulkner: May I see that memorandum? I did not see that before.

The Witness: This will be introduced.

Mr. Pratt: Q. Can you refresh your recollection from these papers and state what markings were on the cases?

A. It was "Nye & Nissen, Inc." and the initials S.F. Cal. 325," with the number 3737 stamped on the end of the cases.

Q. You say that No. 3737 was stamped on every case? A. Every case that I examined. [1663]

Q. Were there any paper labels on any of these cases that you examined?

A. Not to the best of my recollection.

Q. Referring again to the candling of these 1260

(Testimony of C. A. Wirth)

eggs which I take it were intended to be representative of the whole lot, is that right?

A. That is correct.

Q. How did those cases, those eggs, then grade as a whole?

A. They would grade no grade, on account of the fact they contained inedibles.

Q. After you left Long Beach on that occasion you said you returned to Los Angeles; that was the 3rd of November. When were you next in contact with this situation?

A. On November 4th I was at the California Pacific Freight Lines, just a few minutes after 8 a. m., when they told me—so as to be there at the time they opened. I was there at eight a. m. The eggs were still on the truck in their yard, where they had been loaded, where I could see them in the same position that they had been loaded down at the dock the previous day.

Q. What then occurred?

A. I told the freight office to contact Nye & Nissen's office in Los Angeles and find out what they wanted to be done with the eggs. They asked that they be brought to their place.

Q. Did you talk to someone?

A. I did not at that time.

Q. When did you first talk to anyone connected with the firm of Nye & Nissen?

A. About fifteen minutes after eight, wher the truck drove into Nye & Nissen's plant at 800

(Testimony of C. A. Wirth.)

Fourth Place, Los Angeles, and I had followed the truck over there with my car.

Q. Whom did you see when you got to the plant of Nye & Nissen in Los Angeles.

A. Mr. Frank Gartenberg.

Q. What was his connection with, or position with the firm of Nye & Nissen?

A. I don't know his official position.

Q. Did you see or talk to anyone else there at Nye & Nissen's plant?

A. Later in the day, but not just at this time.

Q. What occurred then at the plant of Nye & Nissen?

A. The eggs were unloaded from the truck, or the dock of Nye & Nissen, into their plant, and then I issued a violation notice to Nye & Nissen saying that the eggs were in violation of the Agricultural Code of the State of California, and gave the instruction that they should be reconditioned to meet the requirements within 24 hours or they would be subject to seizure, and also ordered the eggs to be moved only under the orders of an enforcement officer.

Q. What do you mean by reconditioning the eggs?

A. It is an expression we use, which means regrading, or getting them into such condition that they would make a grade to meet the requirements of the Agricultural Code.

Q. What was then done in regard to these eggs?

A. Later in the day they started reconditioning

(Testimony of C. A. Wirth.)

—regrading and reconditioning the eggs and finished the next day.

Q. You mean candling all of the eggs?

A. Yes, all the eggs were candled.

Q. Were you there while that was done?

A. I was in and out and was there when they were completed.

Q. How many cases of eggs were taken from the boat and carted over to the plant of Nye & Nissen in Los Angeles?

A. 40 full cases and one case that contained 21 dozen.

Q. What happened as far as the reconditioning of these 40 plus cases were concerned?

A. The requirement—my requirement was that the inedibles be removed. They were removed——

Q. How many inedibles were removed?

A. 146½ dozen inedibles.

Q. How many is that, 146½ dozen, can you compute that?

A. 1758.

Q. You say 1758 of these eggs were found to be inedible? A. Yes.

Q. What was done with them?

A. They were loaded onto a truck and taken to an incinerator.

Q. The balance of the eggs were graded into what grade?

A. I don't know. Our requirement was the inedibles be removed at that time. I released the eggs then to Nye & Nissen.

(Testimony of C. A. Wirth.)

Q. Without paying any attention to the grade that they were given. A. Yes.

Q. Who removed the inedible eggs?

A. The candlers there. I am not positive as to——

Q. Were they employes of Nye & Nissen?

A. Yes.

Q. All of them, all the candlers? A. Yes.

Q. So the inedibles then were removed by the employes of Nye & Nissen? A. Yes.

Q. Now, did you examine any of the eggs on that occasion?

A. That morning after the eggs were loaded onto the dock I took a case that had not been examined before and examined the entire contents of the case at that time.

Q. With whom?

A. Not accompanied by anybody, but Mr. Gartenberg witnessed the examination.

Q. You examined then a full 30 dozen eggs, 360 eggs in that case? A. I did.

Q. With what result?

A. I found 27 eggs that were inedible—wait a minute. Of those 18 were addled or mixed rots, 7 were moldy. There were 193 grade B eggs, 140 grade C eggs.

Q. In your examination of these eggs were you able to determine—I am speaking of all the eggs you examined of these that were around the boat,—were you able to determine whether they were plain eggs of whether they had been processed?

(Testimony of C. A. Wirth.)

A. I was.

Q. What did you determine in that respect?

A. They were not processed.

Q. They were what you call plain eggs?

A. They are what we designate as plain eggs.

Q. Now, the case of eggs that you examined there on the morning of the 4th of November at the plant of Nye & Nissen, after you had removed and candled those eggs, what did you do with the case they were in?

A. I took the case with me.

Q. Will you look at this case here, please, Mr. Wirth, and see if you can identify this as the case which you brought from that point?

A. I can.

Q. How do you identify it?

A. I placed my initials and these three marks on it that morning.

Q. Will you look at this case, please, and state from the appearance of the case, so far as the nail holes are concerned, whether that case had been opened previous to your having opened it?

Mr. Faulkner: We object to that as calling for the opinion and conclusion of the witness and not the subject matter of expert testimony. The jury can determine that.

Mr. Pratt: If the Court please——

Mr. Faulkner: That is an ultimate fact, not a matter of opinion whether a case has been opened.

Mr. Pratt: This witness has dealt with eggs for years and I believe that he is thoroughly quali-

(Testimony of C. A. Wirth.)

fied as an expert to determine whether this as an egg case shows whether or not it had been previously been opened, I think it is the subject of expert testimony in the circumstances of this situation.

Mr. Faulkner: I respectfully submit, your Honor, that that is a fact and the egg case speaks for itself. It is not the subject matter of an opinion and conclusion of the witness.

The Court: Read the question.

(Question read).

The Court: He may state if he knows.

Mr. Faulkner: Exception. He was not asked if he knew. He was asked to express an opinion, your Honor. That is my objection. He was asked to express an opinion, not a fact but an opinion.

Mr. Pratt: I am asking it as a fact.

Mr. Faulkner: No——

Mr. Pratt: I now ask it as a fact.

Mr. Faulkner: We submit the witness cannot testify as a fact to whether or not that box was opened, because he only saw the box on the third day of November, 1943, and the box may have been in existence for many, many years prior to that time.

The Court: He may answer if he knows.

Mr. Faulkner: Exception.

A. I will state the box had not been opened until I opened it after it had been nailed up, after the lids had been nailed on.

Mr. Pratt: Q. And you arrived at that conclusion by reason of the facts that you observed?

(Testimony of C. A. Wirth.)

A. There is no indication of any nail holes except the ones that were caused by the nails when this lid was nailed onto this case. There is no indication anywhere along here that there had been any opening or any other nails driven into this case.

Q. Mr. Wirth, will you with a red pencil indicate your identification marks that you put on this case at the time you opened it on the 4th of November 1943?

A. Do you want me to initial it?

Q. You might. Now, directing your attention to the number 3737 which is stamped on this case, can you state whether the other cases which you have said all were marked 3737 were marked in the same manner? A. They were.

Q. Can you state whether the marking on the others was identical to this?

A. The number 3737 is identical. The "Medium" marking on there was not on all the other cases.

Q. Referring to the appearance you have testified to of the lack of other nail holes in these cases other than those made by the nails which you removed in opening the case, I will ask whether you observed if that situation obtained as to other cases?

A. In opening all cases that we examined we watched very carefully——

Mr. Faulkner We object to that, your Honor, because the cases are the best evidence. In other words, he has expressed an opinion about this and

(Testimony of C. A. Wirth.)

the jury can compare his opinion with what he has said. But the best evidence of the condition of the top of the other cases which were in the possession of these enforcement officers is the cases themselves.

The Court: He may state if he examined the cases at that time and place and state the result of that examination.

Mr. Faulkner: That is not the best evidence that the proof of the nature of the cases is capable of. These men were officers. They had possession of the cases, and if the condition of the tops is a matter of dispute, the cases are the best evidence.

The Court: Read the question.

(Question read).

The Court: He may answer. The objection is overruled.

Mr. Faulkner: Exception.

A. It did. In opening each case we carefully noted whether there were any indications that the case had been opened other than at the time it had been nailed up with the lids that were on at the time.

Mr. Pratt: Q. You found what?

A. We found no evidence that they had been opened.

Q. Referring to the condition of these eggs as you observed them in candling them, are you able to state whether the condition which you found could have been produced by lack of proper refrigeration or otherwise over a period of a few days or weeks?

(Testimony of C. A. Wirth.)

Mr. Faulkner: We object to that upon the ground it calls for the opinion and conclusion of the witness, and the witness is not qualified to express that opinion.

Mr. Pratt: He is qualified as an expert, if the Court please, and this is a question——

The Court: On refrigeration?

Mr. Pratt: I thought he had qualified in general as an expert in connection with the handling——

The Court: The Court will rule a proper foundation has not been laid.

Mr. Pratt: Q. Mr. Wirth, you stated your education as a graduate of the Department of Agriculture of the University of Minnesota. What experience have you had in the years since your graduation in connection with the refrigeration and protection by that method of eggs?

A. I had fourteen years experience handling eggs commercially where we stored eggs——

Mr. Faulkner: Just a minute.

Mr. Pratt: I am qualifying the witness as an expert.

Mr. Faulkner: He is trying to give an answer to the first question.

Mr. Pratt: No.

The Court: Proceed.

Mr. Pratt: Q. Go ahead, Mr. Wirth.

A. I had fourteen years experience in storing and handling eggs commercially of my own that I bought and sold, and for the last eleven years I have had experience in seeing eggs in storage, see-

(Testimony of C. A. Wirth.)

ing the effect of storage conditions on eggs. I have seen them taken out, removed from storage, candling and grading them—when they have first been taken out, candling and grading them within a few hours or a few days later; and I have worked with them constantly for some—it would be about twenty-five years now.

Mr. Pratt: I submit that the witness is qualified as an expert to answer the question in regard to the effect of lack of refrigeration. The question that I asked previously to which objection was made I submit he can answer.

Mr. Faulkner: May I examine the witness on his qualifications?

The Court: You may.

Mr. Faulkner: Q. Mr. Wirth, in your experience in the State Department of Agriculture, how many occasions have you had to examine the causes that have caused the deterioriation of eggs aboard ship?

A. Approximately five or six times.

Q. Over what period of time?

A. In the last three or four years.

Q. So that in all of the years you have been in the egg business you have only examined into the quality of eggs in respect to refrigeration on shipboard five or six times, is that right?

A. To the best of my recollection.

Q. And when were those occasions?

A. A lot of eggs at Port Hueneme I was called in on; the other cases were down at the harbor,

(Testimony of C. A. Wirth.)

either at San Pedro or Wilmington, where I was called in by the companies to examine either where the eggs were badly moulded or out of grade or the steamship company requested that I make an examination.

Q. What companies?

A. The American Steamship Lines was one; One at Hueneme I was working on in connection with the Federal grader—I think it was the War Food Administration request—and there was one other steamship line in San Pedro presently named—I can't give you the exact name.

Q. How many cases of eggs were involved?

A. At Hueneme to my best recollection about twenty-five or thirty. The other cases—at one time I think there were forty at San Pedro and another time I think fifteen and the other time—that is altogether I think there were four or five times—five times I think was the number.

Q. Would a hundred and fifty cases be the maximum that you examined? A. I think so.

Q. In how long a period?

A. Over the last three or four years.

Q. Now have you made any study of refrigeration in respect to eggs?

A. Very definitely.

Q. What is the temperature that eggs should be kept at?

A. I would like to have you make it specific.

Q. What is the temperature that eggs should be kept at in a cold storage chill room?

(Testimony of C. A. Wirth.)

A. For long storage are you referring to or short storage? It varies. It depends on the circumstances of storage. The storage men try to hold it under thirty or around thirty for long periods. If it is in a chill room in a plant a temperature—where they are going to hold it for approximately two to three weeks a temperature around fifty is plenty ample to maintain the quality of eggs for that time. One operator in Los Angeles at the present time is using fifty-five to sixty and is getting very satisfactory results. We are now taking experimental work with a cooler, a small cooler with a refrigerator unit, and we are operating that now and did last year at sixty and are getting very excellent results for three to four to five weeks holding the eggs.

Q. What should the humidity be in the chill rooms?

A. Approximately eighty-five.

Q. If you maintain the temperature at thirty degrees, they will freeze, will they not?

A. They will not.

Q. Never?

A. I never heard of them freezing in storage and that is the temperature they are held at. [1675]

Q. Have you ever seen frozen eggs?

A. I have, lots of them.

Q. What was the storage temperature in the place where they were frozen?

A. I don't think they were frozen in storage. I think they were frozen in transit coming in from the midwest in cold weather.

(Testimony of C. A. Wirth.)

Q. When you maintain a temperature of thirty degrees what should the humidity be then?

A. I am not familiar with humidity conditions in a storage plant where they are kept over long periods because I do not work with that. I work almost entirely with the storage of eggs where they are held three, four or five weeks in trade practice.

Q. Suppose that a chill room was maintained on a ship to keep the eggs in that room for several months, over, say, the period of October 15 until April 4; what temperature should the eggs be kept at?

A. The only practical temperature would be approximately forty, somewhere between forty and fifty degrees, depending on other commodities that they might have, and at the end of that period the eggs probably would be deteriorated in quality.

Q. In other words, Mr. Wirth, if you were instructing with respect to the temperature on shipboard, you would instruct the engineer of the ship to keep his eggs at forty to fifty degrees, is that your testimony?

A. Approximately forty degrees—try to hold the box around forty.

Q. Are you familiar with mould?

A. Yes. [1676]

Q. What causes mould?

A. Bacterial fungus growth.

Q. There is bacteria?

A. Not bacteria—fungus growth.

Q. There is bacteria on every egg, isn't that right?

A. That is right.

(Testimony of C. A. Wirth.)

Q. What is the relation of sweating or wetness to the forming of mould?

A. It will accentuate it.

Q. After mould has started will it grow?

A. Very definitely.

Q. Regardless of moisture, will it not?

A. Well, there is a limitation in there, of course. That is, if it has started to grow, the presence of moisture will accelerate the rate. It can be slowed up by lack of moisture or drying.

Q. But it will still continue, will it not?

A. Well, not at a very rapid rate.

Q. After mould has formed and bacteria has formed on an egg, how fast will the egg deteriorate?

A. Depending entirely on conditions under which it was placed.

Q. So that if you do not know the conditions you do not know how fast the deterioration occurred, do you? A. That is correct.

Q. You know nothing of the conditions under which these eggs were kept except on the third day of November, 1944, isn't that correct?

A. That is correct.

Mr. Faulkner: All right. We object to the witness testifying to the condition of these eggs on the ground that his qualifications show he is not in a position to so testify. [1677]

Mr. Pratt: If the Court please, I think he is completely qualified. The question I asked was whether or not the conditions which he found these eggs in, the inferior condition, could have occurred

(Testimony of C. A. Wirth.)

on account of lack of proper refrigeration over a short period of a few weeks.

Mr. Faulkner: That is the question and that is the basis of my objection. It is not the condition that he found in an icebox on November 3. It is the condition that an icebox was in during a period of time that he never saw it, the period from the 14th or 15th of October until November 3, and this witness did not see it during that priod, but the evidence is in the record of its condition.

Mr. Pratt: I insist that the witness is qualified, if the Court please, under the question as it was asked.

The Court: I will sustain the objection. You may reframe the question if you wish.

Mr. Pratt: Q. You have stated that some of these eggs were mouldy, right?

A. That is correct.

Q. From your experience and your knowledge as an expert are you able to state whether that condition of mould could have occurred on account of lack of refrigeration during a period of two or three weeks?

Mr. Faulkner: The witness has just testified that the mould will form from the sweating of eggs.

The Court: He may answer. The objection is overruled. [1678]

A. The condition I found in my opinion could not have been caused by——

Mr. Faulkner: I ask that that go out as not responsive.

(Testimony of C. A. Wirth.)

Mr. Pratt: He has not finished the answer and it is responsive.

Mr. Faulkner: That is what you want to prove but it is not responsive to the question. I ask that it go out.

The Court: He has not had an opportunity to answer yet.

Mr. Faulkner: I ask that the part he has given be stricken.

The Court: Read the question and answer.

(Question and answer read.)

The Court: You may conclude.

Mr. Faulkner: Exception.

The Witness: By lack of refrigeration for one or two weeks.

Mr. Pratt: Q. Could you tell from an examination of the eggs, and in connection with the condition you found them in, how old these eggs were?

Mr. Faulkner: Same objection, your Honor. It is the subject matter of expert testimony.

The Court: He may answer. The objection is overruled.

Mr. Faulkner: Exception.

The Witness: A. I can tell the approximate age of the eggs, yes. [1679]

Mr. Pratt: Q. What was the approximate age of those eggs?

A. I would say approximately six to seven months old.

Q. How did you determine the age of those eggs?

A. By observation under the light, the depth of

(Testimony of C. A. Wirth.)

the air cell, the shrinkage that was in those eggs, the coloration that shows up under the light as we rotated them before the light; the down shadow on the air cell, the condition of the white of eggs that were broken; the presence of certain types of rot which only occur in eggs that have been under storage conditions.

Q. Does the mould have anything to do with your judgment as to the age of the egg?

A. There are certain types of mould that are generally found in storage lots and they were present in this lot.

Mr. Pratt: You may cross-examine.

The Court: We will take a recess for a few minutes. The jurors may be excused.

(Recess.)

Mr. Pratt: I have one or two more questions to ask.

Mr. Faulkner: Before questioning the witness, your Honor, at the recess in this case my clients and I were examining this egg box and I looked up and Mr. Johnson, who was here, by order of the court was permitted to aid in the preparation of the case for the Government, was standing there and I asked him if he would retire. He said he would not, and that he would remain there, because it was his duty to maintain the exhibits. Mr. Powers was here, and Mr. Connolly was here. I would ask the direction of the court that when I have a conference with my clients in respect to these things that come in which we have never seen before, it is most diffi-

(Testimony of C. A. Wirth.)

cult for us to examine them in the presence of Mr. Johnson. He was permitted to remain here without any objection on the part of the defendants in the matter of this case. I think he has presumed upon his position, and I would like the matter clarified, because I don't want to get into altercation with these men again.

Mr. Pratt: If the Court please, as far as Mr. Johnson, of course, he is trying to do his duty in his obligation to the Government, and if he had any occasion to think that this box might be tampered with by the defendants it seems to me he had a duty and a perfect right, particularly a duty to see that the box was not tampered with or interfered with.

The Court: Well, I will have to begin by saying, in all my years of experience nothing has been tampered with in court [1681] to my knowledge, nor even has it been questioned in any degree. Since this is temporarily in the custody of the clerk, of course he is absent at times, but I am not very fearful that anything may or may not happen; until it does, why, it will be then for the court to act, but there will be no difficulty here. There is no matter here that should have any mystery about it, at all, not in the slightest degree. I think with that admonition we will proceed, gentlemen.

Mr. Pratt: Q. Mr. Wirth, on this fourth day of November that you spoke of you testified that the eggs, this truckload of eggs were taken to the plant of Nye & Nissen, and you spoke about the examination of another case, particularly referring to this

(Testimony of C. A. Wirth.)

case which is here on the clerk's desk. I will ask you whether on that same day you examined any other cases in detail? A. I did.

Q. Will you tell about that?

A. Approximately at one p.m. in the company of Mr. Rynerson and Mr. Price ten one-half additional cases were examined on that date.

Q. Ten additional half cases were examined?

A. Yes.

Q. Did you make a detailed record of the results of that examination?

A. The records were kept by Mr. Rynerson.

Mr. Pratt: If the Court please, at this time the Government offers in evidence this egg case, which is Exhibit 129 for Identification.

Mr. Faulkner: We will object to it as incompetent, [1682] irrelevant, and immaterial, not binding upon any of the defendants in this case, and upon all the grounds that were urged to your Honor on extended oral argument at an earlier phase of this case.

The Court: The objection will be overruled.

Mr. Faulkner: Exception.

(The egg case, U. S. Exhibit 129 for Identification, was thereupon received in evidence.)

Cross Examination

Mr. Faulkner: Q. Mr. Wirth, in your testimony you were referring to certain documents to aid your recollection. A. What is that?

Q. You were referring to some documents to aid your recollection.

(Testimony of C. A. Wirth.)

A. Yes (handing documents to counsel).

Q. And the book. The first document that you used to refresh your recollection was a pencil notebook with a brown cover. I would ask that be marked for identification.

The Court: Admitted and marked.

(The document was marked Defendants' Exhibit AG for Identification.)

Mr. Faulkner: The next document that you used to refresh your recollection was a summary. I ask that be marked for identification. That is correct, is it not?

A. That's right.

The Court: Admitted and marked.

(The document was marked Defendants' Exhibit AH for Identification.) [1683]

Q. Then you used two documents, Mr. Wirth, one date 11/3/43. Was that written on that date?

A. Yes, that is correct.

Q. You used that to refresh your recollection?

A. I did.

Mr. Faulkner: I would ask that be marked for identification.

The Court: Admitted and marked.

(The document was marked Defendants' Exhibit AI for Identification.)

Mr. Faulkner: Then you used another paper dated 11/4/43. You used that to refresh your recollection?

A. I did.

Mr. Faulkner: I ask that be marked.

(Testimony of C. A. Wirth.)

(The document was marked Defendants' Exhibit AJ for identification.)

Mr. Faulkner: Q. Now, may I have the book? Would you mind showing me where you had this transaction?

A. It starts right here. Well, I started right here in using it.

Q. Do you remember the transaction, Mr. Wirth, without the benefit of this book?

A. From the very first——

Q. I mean do you remember the details of this transaction without refreshing your recollection from the book?

A. Most of the details, yes.

Q. But some of them you would require the book for, is that right?

A. Yes, to get the exact numbers. I did not try to memorize the exact numbers. [1684]

Q. What day in November of 1943—withdraw that. On the day in November of 1943 when you went down to the William S. Clark, who requested you to go there?

A. I had a conversation with Mr. Prevost, of the steamship lines, and he requested that I go down.

Q. He requested you go down? A. Yes.

Q. When you went down you went down in company with someone else? A. Yes.

Q. Who was that?

A. Mr. Bradway and Mr. Rynerson.

Q. Was that one of your first experiences in examining eggs on a ship? A. Oh, no.

(Testimony of C. A. Wirth.)

Q. You had gone down for a similar purpose on other occasions? A. Yes.

Q. How many occasions; Mr. Wirth, in November, 1943, had you gone down and inspected eggs, for instance, that had deteriorated in quality prior to that time? A. You mean on board ship?

Q. Yes. A. None.

Q. Had you gone down to examine other merchandise? A. No.

Q. Was it since that time that you have gone down on several occasions?

A. Both previous and since.

Q. Maybe I don't understand you.

A. I think at least two of the occasions that I mentioned were previous to this, and when I stated I had about five times that I had examined them, the best of my recollection two were previous to this date and [1685] two were after.

Q. Then on November 3rd you had been down on prior times to examine eggs that were not up to the mark, is that correct? A. Yes.

Q. When was the time next preceding the occasion of November 3rd?

A. I can't remember exactly.

Q. Have you any idea?

A. No. Sometime previous.

Q. What period does your book cover?

A. It is dated on the cover, I think, on the outside. I think it states there. Maybe I can tell by looking at it. It does not take ink very well, but I will get the date here. From October 15, 1943, to

(Testimony of C. A. Wirth.)

approximately the last of—yes, the last of November; a month and a half.

Q. Last of November 1943? A. Yes.

Q. Is any inspection of eggs on a ship other than the William S. Clark noted in this book?

A. Yes.

Q. When you got down there on the pier where the William S. Clark was you examined a case of eggs, case No. 1, is that right?

A. That is correct.

Q. In that first examination do you remember the details of the first case?

A. To be absolutely accurate I would have to use my notes. I haven't tried to memorize those things.

Q. No. I want to keep them to ask you the questions, and I want you to have them to answer them. That is the problem. It may be that I can do it with this. Is it your practice, [1686] Mr. Wirth, in your examining eggs, to put the lot number down?

A. Yes, if they have one.

Q. Will you show me some other instance in that period where you took and put the lot number of eggs down?

A. I am not sure whether I have another notebook out in my brief case that has lot numbers on.

Q. I just want to know——

A. I don't know whether I have in this one, but I have one that was just two weeks or three weeks previous to this, or four weeks, that lot numbers were on, I am sure of that. I am not so sure there is one here, or not.

(Testimony of C. A. Wirth.)

Q. I just want to know, Mr. Wirth, whether you have any occasions in that book where you put the lot number on.

A. Yes, there happens to be several lots that I had examined, lot number, for instance, 4037, 4825, 4446, 3469.

Q. Where did you make that examination?

A. Probably at the Terminal Refrigerating Company. Those are all Terminal Refrigerating numbers.

Q. When you went down to the Refrigerating Company you were tendered certain eggs that had a certain lot number, and you made an examination and identified the examination by the lot number?

A. Yes.

Q. On the occasion you were on the vessel William Clark, you had merely 40 cases of eggs tendered you for inspection? A. Yes.

Q. There was no designation to those but lot numbers 1, 2, 3,——

A. Nobody told me that they were a certain lot.

Q. Is it your practice to put all of the markings on the cases which you examine in your records of examination?

A. I try to keep accurate records as I possibly can.

Q. In the situation where you had the certain lot numbers which were in a refrigerating plant, tell me what other markings were on the cases.

A. I am trying to see whether I had any others here. I have no other notations on this one.

(Testimony of C. A. Wirth.)

Q. The only notation you had of the marking in relation to the refrigerating plant was a lot number?

A. That's right.

Q. Those eggs were tendered to you by lot number for examination, were they not?

A. They were tendered to me on my request for examination.

Q. For examination. Your request was to examine those particular lots, is that right?

A. That's right.

Q. And you did examine them, is that correct?

A. I have a notation as to the final result of the examination there.

Q. I did not ask that. I think you are intent on your book and I am intent on getting an answer. I asked you if you examined them.

A. I don't remember.

Q. Now, can you give me any instance in that period when you examined any eggs, in the period that book covers, from a refrigerating plant where you put the lot number down?

A. I have not been able to see any in this book.

Q. Will you show me in your book any cases where you noted all [1688] of the markings on the case down—— A. Yes.

Q. What instance is that?

A. I have one with a lot number here, and I find now on November 6th.

Q. May I see that?

A. Yes. The lot number up here, freight, Port-

(Testimony of C. A. Wirth.)

land, Oregon, Grand Central. Here is the number. There is the number of the invoice.

Q. The instance where you have the lot number 3719. Whose lot number is that?

A. I don't know at this time.

Q. Is that the marking on a case?

A. That was the marking on a lot that I examined.

Q. Was the mark on the case?

A. Stamped on a case.

Q. What else was written on the case?

A. I would have to check on my notes. Large eggs. "Lg Eggs."

Q. What? A. Large eggs.

Q. That was marked on the cases?

A. Yes. The people selling them, they were sold in plain cartons with that marking on there, Large eggs, Small Mediums in the cases. The cases of eggs were ordered to be recandled in the market. There were one hundred some odd cases. 85½ cases——

Q. Will you turn back to this particular transaction? Now, in the first case of eggs that you examined, was that examination on the ship?

A. Yes.

Q. Then, as I understand it, later you made an examination of several other cases?

A. On the ship, yes.

Q. That was on the same ship? A. Yes.

Q. Now, in relation to the first case examined, I will ask you——I will withdraw that.

A Grade B egg is not a rotten egg, is it?

(Testimony of C. A. Wirth.)

A. It is an edible egg.

Q. A Grade C egg is not a rotten egg, is it?

A. It is an edible egg.

Q. Did you in the examination of the first case find that ten out of every twelve eggs were rotten?

A. I did not.

Q. Did you in the examination of the case No. 2 find that ten out of every twelve eggs were rotten?

A. Ten out of every twelve?

Q. Ten out of every twelve.

A. 80 percent. I did not.

Q. Case 3? A. I did not.

Q. Case 4? A. I did not.

Q. Case 5? A. I did not.

Q. Case 6? A. I did not.

Q. Did you on any of those cases find that 50 percent of all of the eggs were rotten?

A. I did not.

Q. Did you find that 33-1/3 percent were rotten in all of the cases? A. I did not.

Q. Now, in the documents that you have there, in that first case that you examined there were three inedible eggs. A. That is correct.

Q. Then you broke those down; how did you break them down?

A. Into—my notation here, addled—that means mixed rots. [1690]

Q. What is your definition of an addled egg?

A. One that the contents of are all mixed up.

Q. That does not mean that it is a rotten egg?

(Testimony of C. A. Wirth.)

A. It does, most assuredly.

Q. Pardon me?

A. It does most assuredly mean it is a rotten egg.

Q. That means the whites and yolks are mixed up? A. Yes, and putrid and decomposed.

Q. Pardon me?

A. Putrid and decomposed.

Q. Does that identify——

A. That is the definition of an addled egg.

Q. Let's straighten it out and start over. What is the definition of an addled egg?

A. One that is putrid, the contents of which are putrid and decomposed.

Q. There was one addled egg in No. 2?

A. Three. Oh, you mean in the first case now?

Q. Yes. A. Three addled eggs.

Q. They were all addled?

A. The rots in there were addled.

Q. In that case you found Grade B and Grade C eggs. In the second case you found 15 inedible eggs, did you not? A. Yes.

Q. That was an examination of half a case?

A. Yes.

Q. In the other instance you mentioned the entire case? A. Yes.

Q. What percentage of inedibles in the first case—the percentage was less than one percent, wasn't it?

A. I think—I don't know whether we ran it out.

Q. You just carried the total out?

(Testimony of C. A. Wirth.)

A. Yes; approximately one percent, a trifle under one percent. Probably .9 percent. That is less than one percent.

Q. The 15 inedibles on case 2, how were they broken down?

A. Into 6 that were addled and mixed rots and then 9 spot rots.

Q. What does that mean?

A. A spot rot is a rot that is developed from the fact that there has been an adherence of a yolk at sometime when that egg has set for a long time and the yolk sticks to the shell, and then where the yolk has stuck the rot develops and we speak of it as spot rot. That is indicative of the long time that this egg stayed in one position so the yolk would adhere and rot develops at that point.

Q. What was the percentage of the 15?

A. That would make it, 9 and 6.

Q. 9 and 6? A. Yes.

Q. In the next case there were 36 inedibles.

A. Right.

Q. How was that broken down?

A. Into 3 addled and spot rots—I mean addled and mixed rots and 23 were mouldy and 10 were spot rots. That adds up to 36.

Q. In other words, two-thirds of the inedibles, practically a little more than that were mouldy in the third case?

A. A little more than—it is a little less than approximately two thirds. A little less. 23 out of the 36, it left 13 that were not moldy.

(Testimony of C. A. Wirth.)

Q. 24 would be two-thirds. A. Yes.

Q. The next 40 inedibles, how was that broken down?

A. Into 6 addled, mixed rots, and 29 mouldy, and 5 spot rots.

Q. Almost ¾ of the next group of inedibles were mouldy? A. Yes.

Q. Then in the fifth case there were six inedibles? A. Yes.

Q. How was that broken down?

A. 4 that were addled or mixed, one spot and one mouldy.

Q. Next, No. 6, there were 8.

A. 8, 4 that were addled or mixed rot and 3 spot rots and 1 mouldy.

Q. That total of inedibles, the quantity of eggs that you candled when candling the first six cases comprised 8.6 percent; am I right?

A. I think that is the figure. I have it down there.

Q. Those eggs were all selected by you without participation of anyone from the firm of Nye & Nissen, were they not? A. Correct.

Q. Do you know whether anyone in the firm of Nye & Nissen had likewise requested that you be down there to examine these eggs? A. No.

Q. You don't know. Well, in the course of the handling of these eggs, you gave a notice of some kind that the eggs were in violation, is that right?

A. Yes.

(Testimony of C. A. Wirth.)

Q. It is the fact, is it not, that any case of eggs that contains any inedible eggs is in violation?

A. It was at that time, yes. [1693]

Q. I mean those eggs. A. That's right.

Q. So that the moment that your department is conscious that a case of eggs, regardless of the quality of the merchandise, contains a rotten egg, it is in violation to hold it for sale?

A. That is correct.

Q. The eggs that were involved in this transaction, after your examination, were in violation regardless of whose fault it was, isn't that correct?

A. That is correct.

Q. Then, as I understand it, Mr. Wirth, you gave a notice to some truck driver and he held the eggs and then they were removed from the Terminal to the firm of Nye & Nissen? A. Yes.

Q. They were then recandled by employees in that firm?

A. They were recandled by the Nye & Nissen firm.

Q. And the recandling process was done while you were present, but you did not participate?

A. I was not present at all the time.

Q. But at all events, acting on that candling process in their plant, you took some action based upon it, did you not?

A. I released the eggs that were left and then destroyed the inedibles.

Q. Yes. At the time that you had examined the cases of eggs—withdraw that. On that recan-

(Testimony of C. A. Wirth.)

dling process, it was unquestionably reported to you, was it not, that there were, I think, 146½ dozen——

A. Yes.

Q. That the firm of Nye & Nissen found were not fit for consumption?. A. Yes.

Q. Do you know what proportion that was to the entire lot?

A. Approximately 12 plus per cent.

Q. In other words, Mr. Wirth, the examination that you made of these eggs, yourself, showed that merely 8 percent were inedible? A. Yes.

Q. But when the company which is involved in this litigation, when their employees made an examination of the eggs they found that even a larger percentage were inedible. A. Yes.

Q. Isn't that right. At the time you made your examination you did it for the purpose of determining the quality of the general lot of eggs, isn't that correct? A. Yes.

Q. After you had made your examination you reached the conclusion that the rest of the eggs would run approximately the same manner in which your inspection indicated, is that right?

A. Approximately the same.

Q. So that it was apparent to you, was it not, that the firm of Nye & Nissen had fairly candled the eggs? A. It was not.

Q. Pardon me? A. It was not.

Q. It was not?

A. That is my answer.

Q. They found 50——

(Testimony of C. A. Wirth.)

A. Oh, I beg your pardon. I did not get it. You mean after the recandling?

Q. Yes. A. Yes.

Q. On the recandling of the eggs it was apparent to you, was [1695] it——

A. Yes, yes. I would change my answer to "Yes." I misunderstood your question. I am sorry.

Q. You acted on that? A. Yes. [1695-a]

Q. And on the basis of that, then, there was no action on your part until you released these eggs to the firm of Nye & Nissen? A. That is correct.

Q. Is that the last you saw of them?

A. That is right.

Q. Is that correct?

A. That is correct.

Q. Now, when you examined these cases that you used for inspection purposes, you found that the first case—I am trying to look for something that is here, your Honor—I think you testified, Mr. Wirth, that Case No. 1 you observed had a lot number 3737?

A. It says right at the top.

Q. That is right on the top? A. Yes.

Q. Now, on Case No. 2 my recollection is that you testified that you have no recollection of any marking.

A. I said I had no notations made in my notes.

Q. I think the precise language was that you had no recollection of the marks on these cases, isn't that correct?

A. The record would have to establish that.

Q. Pardon me?

(Testimony of C. A. Wirth.)

A. I said the record would have to establish that.

Q. What is your recollection?

A. At the time of the candling my best recollection is that each case as we took them had the number 3737, but we did not put it down. We don't always put down everything.

Q. At all events, the only time that you put down Lot 3737—I may be wrong, but it appears to be—— [1696]

A. I think there is another notation in there possibly. I think I can find it for you. Yes, here is another notation. That was made after we finished the candling.

Q. In other words, I thought that was another transaction. In other words, that first six cases of eggs that you candled you only made a notation of the lot number in respect to Case 1, is that right?

A. That is correct.

Q. Then you candled one case, was it, the seventh case, on the next day? A. Yes.

Q. Where was that? Down at this warehouse?

A. At the Nye & Nissen plant.

Q. At Nye & Nissen's plant, and I thought you said somewhere you had a record of what you found on that day?

A. I have. It is in there. This is the record here.

Q. On the lower part?

A. Yes. This is the record here. I haven't the totals there—I have the rots indicated, but I did not total all of it there. I have the total number.

(Testimony of C. A. Wirth.)

Q. Now, the total was 193 B's, 140 C's, and is that 29——

A. I think it is 29, yes.

Q. Now, you have written under the inedible eggs the various words, mold, moldy, and so on. Can you tell me how many moldy eggs there were?

A. In checking there awhile ago I had seven.

Q. You had what?

A. I just checked hurriedly through there on my previous, and I am quite sure there were seven.

Q. Have you any record in this book, Mr. Wirth, of any other [1697] egg candling process other than the Nye & Nissen one?

A. I do not know whether I have the details in this book or not. Here is—not quite. That is, it is in some dozen lots, and this was the number of black rots I found in dozens of eggs checked down there.

Q. That is just a small quantity, is that right?

A. Yes. I generally work in the smaller quantities.

Q. Mr. Wirth, you then state you prepared a paper on the 4th of November and that you observed these cases, and that the words Nye & Nissen were on some of the cases. A. Yes.

Q. How many cases had the name Nye & Nissen on them? A. I don't remember.

Q. What?

A. I don't remember the exact number.

Q. And you made no notation of that, did you?

(Testimony of C. A. Wirth.)

A. I have no notation that I can find of the exact number that had that word on it.

Q. Some of the cases had another mark, "S. F. Cal. 325." Is that an additional marking than Nye & Nissen?

A. No, I think that is the number of the truck, isn't it? Oh yes, That was all together. This "Nye & Nissen, Inc., S. F. Cal. 325," was all one stamp.

Q. Is that a steneiled stamp?

A. I think it is a rubber stamp, if my recollection is correct.

Q. You have under the words "Identification Marks," "Lot 3737, Nye & Nissen, Inc., San Francisco, Cal., 325"? A. Yes. [1698]

Q. Is that right? A. Yes.

Q. You did not indicate on your record that all were marked with either mark, did you?

A. No.

Q. But it is your testimony here that you know these cases now were all marked 3737, is that right?

A. I made no notation on there, but the next day in preparing a report, a typed report, I have a notation in that typed report that all the cases bear the 3737.

Q. When you prepared this report of eggs candled on November 4, 1940——

A. There is an additional report to that.

Q. Just a moment, please. When you prepared this report on November 4, 1943, showing your activity on November 3, 1943, you made no nota-

(Testimony of C. A. Wirth.)

tion on that, that they were any part of Lot 3737, did you?

A. No, there is no notation on that.

Q. How many reports do you make, Mr. Wirth?

A. I made a typewritten report of our activities which accompanied that.

Q. I see. Now you have examined a box here, Mr. Wirth. I would like to get this box a little closer to the Jury, your Honor. It might take two chairs. Will you step down here, Mr. Wirth? You expressed an opinion here in court. You expressed an opinion as an old handler of eggs that you think this case had never been opened from the time it was first nailed up until you opened it, is that right? A. That is correct.

Q. Is that case typical of all the cases you saw down there? A. I think so. [1699]

Q. Is your testimony that all of the cases that you saw down there predicated upon the same things that you saw that are apparent on this case?

A. I, of course, did not open all the cases. Of the cases that I opened, that would be true.

Q. In other words, then, your testimony that the forty cases, if you gave such testimony, were all boxes that had never been opened, is simply confined to cases that you did open, is that right?

A. That is correct.

Q. Now, is this box and its external appearance the same today as when you saw it down there?

A. It has been stored for two years and it got

(Testimony of C. A. Wirth.)

a little damp once or twice, a little rusty. It is different that way.

Q. You did not drop it in the Bay at any time?

A. No.

Q. All the dampness and the warping and the condition of water that appears, none of that could have come from the William S. Clark, could it, Mr. Wirth? A. Possibly.

Q. We will take the first part of this case. Will you look at it, please. In your opinion place this top on that box in the manner in which it most closely resembled the box at the time you opened it.

A. I believe that is it right there (indicating).

Q. You think that is it? A. I think so.

Q. The nail would be under there, wouldn't it, right here? Is that right? And a nail would be under here, is that right? [1700]

A. Yes.

Q. Now, show me the nail that is under there?

A. Right there (indicating).

Q. All right. Then you have to put the box like that, don't you? Take the pencil and draw the pencil through this the way you just had it and show me where the nail is?

A. Right there (indicating). That is as near on top as I can get with the pencil.

Q. There is a nail there, isn't there?

A. Yes.

Q. That nail was in there, wasn't it?

A. I drove it in.

Q. You drove it in?

(Testimony of C. A. Wirth.)

A. Yes, after I took it off.

Q. Then you took this off and drove that nail in? A. Yes.

Q. There is no question about it. You remember it?

A. To the best of my recollection.

Q. That is your testimony?

A. My best recollection.

Q. That you drove that nail in?

Now then, you drive—you drove this nail in. Now, did you drive the nail in there (indicating)?

A. As I remember, after I took this off later, in holding it I drove the nail back in there that I took out of these so as to have them.

Q. Now, on this box, Mr. Wirth, there is a nail that you drove in these that was part of the cover, wasn't it? A. I think so.

Q. And there is a nail that you drove in here, isn't that right?

A. I think so. Remember, this is warped here.

Q. Please. Now, where on this would this nail have gone [1701] through that cover?

A. Right here.

Q. Make a circle on there where you say the nail in this box as it faces the Jury—may I have the red pencil now—I will put an "X" on this box the way the box faces the Jury?

A. I think that is as near right as I can get it. This a little indistinct at the present time.

Q. There isn't any question that this nail that went through there went in that inside part of this

(Testimony of C. A. Wirth.)

box, is there, no matter what you do with the warping? It went through the wood on the inside of the cleat, isn't that right? A. Yes.

Q. So the box had to be in that position, didn't it? A. No, it had to be up there.

Q. It had to be flush?

A. I can't say exactly flush. Can't see on both sides.

Q. That is just the point. When you put it in position on one end it is not in position up on this end, it is? A. Yes, it is.

Mr. Pratt: I want to call attention to the fact that these two boards fit together and they must fit together in order to have——

Mr. Faulkner: Your Honor, that is not a legal objection. I do not need Mr. Pratt's help now or at any stage of the case. When the going is tough for him he always tries to bother me.

The Witness: I contend that the nail holes do fit.

Mr. Faulkner: Leave them as they are.

The Witness: It has to be nailed in place. [1702]

Mr. Faulkner: Q. If it will go in place.

A. It will go in place.

Q. That is your opinion, isn't it?

A. Yes, definitely.

Q. Mr. Wirth——

A. It isn't over there.

Mr. Pratt: If the Court please, I object to the marking of this case in the way Counsel is doing it. These two top boards necessarily fit together and he is marking in a place where no marks belong.

(Testimony of C. A. Wirth.)

Mr. Faulkner: I have not made a mark on the thing, your Honor, except the "X" before the Jury. I have merely taken a pencil and put it through the place where anyone can see a nail went through right there, and I have tried to put that pencil on the top of the nail, and that is where it goes.

Mr. Pratt: It does not go there. It fits against this other board.

Mr. Faulkner: Do I have a right to cross-examine the witness uninterruptedly?

Mr. Pratt: He hasn't any right to misrepresent the physical condition on this box, and that is what he is doing.

The Court: The box is as near to the Jury as it is possible to get it, and I will let them determine it. Let us proceed. [1703]

Mr. Faulkner: Q. Place this piece of wood on that box as closely as you can to the manner in which you say it should be. You can't make them fit, can you?

A. No, because this nail here——

Q. Wasn't the nail always there?

A. No, I had to nail it back in. Sometime it has been handled. These are as close as I can get it.

Q. Let me show you over here, Mr. Wirth. In other words, if you are going to move this piece, here, which does not touch this, you have got to move it so that that hole there will go on this nail, which make its further away, isn't that right? Didn't you drive that nail in?

A. I don't know whether I did, or not.

(Testimony of C. A. Wirth.)

Q. Take a look.

A. No, I don't think that that nail was ever in there. Here is the nail hole that that nail was in before.

Q. What is that nail?

A. One that the boxmaker put in there when he put this strip on.

Q. He drove the nail down there, is that right?

A. Evidently.

Q. Isn't that nail the same type of nail that was on this end that somebody who opened the box before had driven in?

A. I don't know.

Q. You don't know. That is correct. In other words, Mr. Wirth, no matter how you manipulate this, if you take that as the hole, if you take that nail right there as the nail that held [1704] the box, this piece of wood won't touch that, will it?

A. No, it can't.

Q. If, however, you take this as the hole—will you follow me on this——

A. I just wondered if this hole——

Q. If you, however, say that that is the hole right there, then that nail did not make that hole, did it?

A. These boards came off of this case and that is the whole thing. There is no question about it.

Q. I know they came off the case. Now, when you have it in that position, that hole will not go over the one where the nail hole was, will it? Yes.

(Testimony of C. A. Wirth.)

or No. Yes, or No, Mr. Wirth? I am entitled to an answer from the witness.

The Court: Wait until he examines it.

Mr. Faulkner: Let us leave them as it is. Let us leave the records as it is.

A. I placed that nail in there, myself. I think it will. Nails aren't always driven straight.

Q. In other words, Mr. Wirth, it is your testimony that if this box is nailed in that position, that a nail driven in these went into the box over here, is that right?

A. I think that is possible.

Q. It is possible. Where are the nail holes on this end?

A. I would say——

Mr. Faulkner: Where is that red pencil, Mr. Welsh?

Q. Will you mark in a circle on the left hand side as you face the X on the box—when you look at this end of the box, which [1705] is the left hand of the box as the X faces the jury, it is apparent to you, is it not, Mr. Wirth, as a man who is observing this particular box at this moment, that if you drove the nail into that hole which is in the cover, and it came through at that point, that the other nail will not go through at that point?

A. No, it is not apparent at all. There it is right there, and there is a place for both of them. Both of them show the red marks.

The Court: The time is up, gentlemen, unless you will be able to get through with this witness.

Mr. Faulkner: No, your Honor.

The Court: Keep in mind the admonition of the court. We will take an adjournment until Tuesday, February 26th. That will give you all a chance to get it straightened out.

(Thereupon an adjournment was taken until Tuesday, February 26, 1946, at 10:00 o'clock a. m.) [1706]

Tuesday, February 26, 1946, 10:00 o'clock a.m.

The Clerk: United States vs. Nye & Nissen.

The Court: You may call the roll.

(Roll called.)

The Clerk: All present, your Honor.

The Court: You may proceed.

C. A. WIRTH,

recalled;

Cross-Examination (resumed)

Mr. Faulkner: Q. Mr. Wirth, you have here a memorandum made of the candling of certain eggs. I think it starts on page 1. The first six cases, as I recall you testified that those were examined by you substantially in this manner: That first the case was brought up, and that was candled in its entirety; and then there were five other cases brought up, and you candled 180 cases or half the eggs. A. Right.

Q. And that was all done on shipboard, was it not? A. Yes.

Q. And done at the same time? A. Yes.

(Testimony of C. A. Wirth.)

Q. Were the six cases all candled at the same time? A. Yes.

Q. It was one continuous operation?

A. Yes.

Q. And you had a candle light rigged up on the ship, did you? A. Yes.

Q. Did you do the actual candling of those eggs, or did you merely make the notations?

A. On the first eggs, Mr. Bradway [1707] actually candled the eggs. On the other five half cases I did the candling and Mr. Bradway made the notations.

Q. In other words, then, the other five are in Mr. Bradway's handwriting? A. Yes, sir.

Q. And the first is in your handwriting?

A. Yes.

Q. But it was done as part of the same operation? A. Yes, we were working together.

Q. You saw what he did and he saw what you did? A. Yes.

Q. Will you describe, Mr. Wirth, everything that you did with those eggs from the time you opened the case until you nailed the case up after you had concluded the job? Withdraw that. After you had finished candling the eggs, the 60 cases, did you nail the cases up?

A. I am not sure whether we did, or not. The steward was there, and I am not sure whether he nailed them up or whether we nailed them up.

Q. Were they removed?

A. Yes, they were moved back to one side until

(Testimony of C. A. Wirth.)

we got through. That is, as each case was finished it was pulled over to one side, and then when we finished the steward had some of the ship's crew carry them off the ship onto the dock.

Q. Now, then, you later saw those same cases?

A. I beg your pardon?

Q. You later saw the same cases, did you not?

A. I don't quite get——

Q. I thought your testimony was that later you saw those cases [1708] in a truck.

A. Yes, all of the 40 some—40 cases plus the 21 dozen—that makes 41 individual cases—were carrried out on the dock and laid onto a truck.

Q. At that time were they nailed up?

A. I am quite sure they were, yes.

Q. Then later you saw the same cases in the plant of Nye & Nissen? A. That is correct.

Q. Will you describe everything you did from the time, in respect to those eggs, you opened the cases and examined them until you set the cases aside for the ship crew stewards to remove? Just what did you do in relation to your candling of the eggs?

A. The case was brought out and sat on a table. It sat about waist high. I had a box opener with me, and we opened the boxes, the cases, took off the lids, and noticed at that time that there was no indication that they had been recently opened.

Then we laid the mate on top of the one-half case, took out the filler; we laid the filler over on top of the mate. That left 26 eggs lying there. And

(Testimony of C. A. Wirth.)

then the candler was sitting right here. I carried a storage battery into the candler, turned on the light, and by taking four eggs at a time we candled the eggs and put them into this filler that we had, and that made 36 eggs at a layer. Then we kept certain places in the filler for C's, a certain place in the filler for the B's, a certain place for the inedibles, and when we [1709] got through candling, why, then we made a notation for each layer. Then at the end, when we had one-half of the case candled we picked those up, placed them back in, and repeated it for the other half of the case. When we worked where we only candled half the case, we did the same procedure, only using one-half of the case instead of the entire case.

Q. In other words, the procedure you just outlined was carried through the examination of the entire six cases? A. Yes.

Q. And that is regardless of whether you did the actual candling or whether you did the noting, is that right? A. Yes.

Q. When you had completed that, in respect to the six cases, that was the last handling of the contents of those eggs made by you or by anyone in your direct presence, is that correct?

A. Of those six cases, yes.

Q. Then later you examined another case of eggs —case 7—I think you have referred to that as case 7, is that right? A. Yes.

Q. Where was that?

A. At the plant of Nye & Nissen in Los Angeles.

(Testimony of C. A. Wirth.)

Q. Who was present at that time?

A. Mr. Gartenberg was there, and I am not sure whether Dora Weinstein was present, or not.

Q. Did you use their candling facilities?

A. Yes, I used their candling facilities.

Q. You placed the eggs in that candling booth and you pulled out the fillers and examined the eggs before candling, right? A. Yes.

Q. And then placed them in various designated places to show the B eggs, what you considered B eggs, the C eggs, and the inedibles, is that right?

A. That is correct, yes.

Q. The candling in all seven cases, then, consisted of picking the eggs out of the particular fillers, holding them to the light, and then putting them back into a particular place in a filler?

A. Yes.

Q. Will you tell me, Mr. Wirth, how many stuck yolk eggs you found in the seven cases that you examined, according to your notes?

A. Well, under the designation of stuck yolks, there was no notation made of any stuck yolks.

Q. The lowest percentage of inedible eggs were in the first case examined, isn't that correct? There were three? A. That is right.

Q. And the highest percentage of grade B eggs that you examined were those that you examined in the presence of an employee of some kind of the firm of Nye & Nissen, isn't that correct?

A. Yes.

Q. Mr. Wirth, at the particular time that you

(Testimony of C. A. Wirth.)

were engaged in this operation your purpose was to determine primarily whether there were any inedible eggs in those cases, is that not correct?

A. No, I don't think that is quite an accurate statement.

Q. Just what was the purpose?

A. To see if there was a [1711] violation of the Egg Standardization Law of the State of California.

Q. That was your purpose? A. Yes.

Q. Would you call that a description of your purpose? A. Yes, that was my duty.

Q. That was part of your duty. In connection with the matter of refrigeration of eggs, what is the shortest time, Mr. Wirth, that mold will form on eggs due to improper temperatures in a chill box or in refrigeration?

A. On the outside of eggs it will form quite rapidly. On the inside of eggs it takes a matter of longer time.

Q. I know, but we still do not know what is the shortest time.

A. Are you referring to the outside or the inside?

Q. Mold on the outside of eggs.

A. Oh, it will form within 24 to 48 hours.

Q. It is true, is it not, that every egg basically is different from every other egg? A. Yes.

Q. It is true, is it not, Mr. Wirth, that an egg coming from a chicken that is improperly fed will result in an egg poorer in quality on the day that it is laid than an egg laid by a properly fed chicken?

(Testimony of C. A. Wirth.)

A. All the experimental work of the university shows that feed has no effect on the quality of eggs.

Q. Has what?

A. Has no effect on the quality of eggs.

Q. In the matter of the initial appearance of the egg, are [1712] they all of the same quality when laid by the chicken? A. No.

Q. What causes the difference?

A. The breeding of the hen, the physical make-up of the hen, and her inherited tendencies or her inherited abilities to produce either a good egg or a poor egg.

Q. What is the lowest grade that you have ever seen of an egg that you know from attending circumstances is a fresh egg? What is the lowest grade that you have found?

A. Inedible.

Q. And the highest grade would be——

A. AA.

Q. So that in the matter of the laying of eggs and the quality of eggs, the quantity of water in the egg has considerable to do with it, has it not?

A. A very slight variation in the quantity of water, actual water in the egg.

Q. A weak white of an egg in a fresh egg is caused by what, Mr. Wirth?

A. By an inherited tendency of that chicken in the lacking of mucine in the white to give it body.

Q. In that type of egg what is the resisting quality in that type of egg against the consequences

(Testimony of C. A. Wirth.)

of mold. Will it deteriorate faster than a strong, healthy egg, or slower?

A. I don't believe there is any direct relation, as far as interior contents are concerned.

Q. Have you ever observed, Mr. Wirth, in your experience—have you ever had under observation, in your experience, a quantity of eggs and observed under your direct presence, the deterioration of those eggs under particular conditions? [1713]

A. Yes.

Q. Have you ever observed the deterioration that will occur in a week's time under improper refrigerating conditions? A. Yes.

Q. When?

A. I ran studies to determine the age of eggs over a period of some two years, placing eggs in storage and taking them out at regular intervals over approximately a year's time.

Q. In each of those instances have you been dealing with eggs that have been carefully placed in a well-run cold storage plant?

A. They were placed in the Los Angeles Terminal Refrigerating Company and held under the very best of commercial storage conditions.

Q. Have you ever had occasion, Mr. Wirth, to observe eggs that were held over a period of time, say, ten days or a shorter period, where they were not being held under the ideal storage facilities of a well-run ice plant? A. I have.

Q. And when was that as to time? What month? What year?

(Testimony of C. A. Wirth.)

A. There are many different instances, both when I was working buying and selling eggs in a plant, during a period from approximately 1924 to 1935, and then later in my work in different plants.

Q. Do you remember any particular instance where you kept eggs under observation for a week?

A. We have had small lots several times.

Q. What were the circumstances under which you observed them? Where were the eggs and how were they being kept?

A. Kept during the hot months—I don't remember whether it was July or August—in my garage where the temperature has gone up, I would say, to as high as 108 or 109. I was trying to abuse them because I was making tests to determine the dye penetration of the shell.

Q. All these matters are matters of opinion with respect to quality and with respect to causes of deterioration, are they not? They are all matters of opinion?

A. Matters of opinion based upon experience and observation and experimentation.

Q. But it is all an opinion, is it not?

A. I really do not know how to answer your question.

Q. I phrased it awkwardly. In other words, Mr. Wirth, when you say that mold will accumulate in twenty-four to forty-eight hours that is an opinion of yours based upon your experience?

A. Yes, and upon observation.

Q. And upon observation. A. Yes.

(Testimony of C. A. Wirth.)

Q. In other words, you have seen eggs that were free from mold on the outside and observed them again twenty-four hours later and they had mold on them, is that right?

A. Yes, that is approximately true. [1715]

Q. Is that the shortest period?

A. Well, I would say approximately that time, yes. I have never checked to absolutely the minute that it appeared.

Q. I know you did not have a stop watch. With respect to the penetration of mold what is the shortest period that you have observed mold penetrate from the outside of the shell to the inside?

A. I would say approximately four to five days.

Q. What are the factors that enter into the speed with which the mold will go from the outside of the shell to the inside?

A. The age of the egg——

Q. What?

A. The age of the egg, the condition of the shell, whether the egg has ever been washed, whether it has ever been cleaned, whether it has had the protective coating in any way removed from it, whether it has been processed or whether it has not been processed.

Q. All of those factors enter into that speed?

A. Yes.

Q. Is there any factor in relation to the nature of the mold?

A. There probably is. I have no scientific experimentation one way or the other.

(Testimony of C. A. Wirth.)

Q. Are there different types of molds, Mr. Wirth?

A. There are various types of molds, yes.

Q. What causes them?

A. They are caused generally by bacteria of some kind or a fungus.

Q. The bacteria is always on the egg, is it not?

A. Yes.

Q. What causes the bacteria to form a mold? What other [1716] conditions?

A. If it was forming inside it would have to enter in through the pores of the egg, and then it would have to have the proper conditions of temperature and moisture.

Q. In other words, temperature and moisture are the two main factors, are they not?

A. Yes, and the ability to penetrate.

Q. And humidity enters into the factor of temperature, does it not? A. Yes.

Q. In other words, in order to determine what caused the existence of a condition of deterioration inside of an egg you would have to know all of the factors in relation to temperature, moisture and handling and the background of the egg itself, is that not correct?

A. Not entirely correct because experience shows that certain types and certain appearances inside the shell of mold only comes after a certain length of time. I have never seen, for instance, certain types or areas of mold develop or certain types of mold develop inside the egg except on eggs that I

(Testimony of C. A. Wirth.)

knew definitely had had a rather long period of storage.

Q. What is the highest quality, Mr. Wirth, that an egg will come out of proper cold storage in your experience? What is the highest grade that you have found in eggs that have come out of cold storage? A. Grade AA.

Q. And what was the length of the storage?

A. Do you mean that it still could come out AA?

Q. No, what was the length of storage——

A. Oh, these eggs that I have seen come out AA?

Q. Yes?

A. Approximately three and a half, four months.

Q. That is not a rare occasion either, is it, to find AA eggs that have been in cold storage for three and a half months?

A. No, it is not rare.

Q. What is the average deterioration of eggs that are held in cold storage in your opinion, Mr. Wirth?

A. It depends entirely upon the condition of the egg, the nature of cold storage; if the eggs were the very top quality they would come out a longer time before they would deteriorate. A lower grade of egg—in other words, they never improve in cold storage.

Q. And the deterioration in some is so slow that they go in as AA and come out as AA?

A. That is correct.

Q. And on the other hand an egg that has just been dropped by a chicken may be an inedible egg; that is right, isn't it? A. That is right.

(Testimony of C. A. Wirth.)

Q. It may be a grade C egg?

A. Well, yes, it could be a grade C possibly. It could possibly be a grade C.

Q. With respect to the quality of eggs did I understand you to say that in your opinion from your experience that the quality of feed given to a chicken is not reflected in the quality of the egg laid by the chicken?

A. That is the latest scientific determination, and it is backed up by university studies.

Q. Is that your opinion, regardless of whether it is some [1718] university's opinion—is that your opinion from your years in the egg business?

A. I have definitely tried to reduce the quality of eggs, the interior quality of eggs by poor feed and I have never been able to do it, in hens in my own flocks.

Q. Is that your opinion regardless——

A. Yes.

Q. Is it your opinion that the quality of feed does not reflect itself in the quality of eggs?

A. Not on the quality. It does on the quantity.

Q. Solely on quantity?

A. You can reduce the quality of the feed to such a point that you can make your chicken quit laying, but if the chicken has the inherent capabilities of producing an egg with a thick white, it will still produce a thick white as long as it will lay eggs.

Q. Regardless of what it eats?

A. Yes. It will quit laying before it quits——

(Testimony of C. A. Wirth.)

Q. During what period of the year, Mr. Wirth, are the qualities of eggs as laid fresh by chickens at their lowest ebb?

A. There are two factors; the older hens and during the hot summer months.

Q. Well, what months?

A. Oh, starting along approximately July, August, September.

Q. October? A. Well, possibly October,

Q. That is your low ebb, is that right?

A. Yes.

Q. And when are the eggs laid—I guess just the opposite of [1719] the ebb—the flow, as it were?

A. Depending again on the age of the chicken. If they are old hens, at the beginning of the year, that is, January, February and March.

Q. Is that as to quality as well as to quantity?

A. That is true.

Q. As to both? A. Both.

Q. In other words, the ebb as to quality and the ebb as to quantity go hand in hand; do they not?

A. Yes.

Mr. Faulkner: I think that is all. Will your Honor indulge me a moment? [1719-a]

Mr. Faulkner: Oh, there was just one other matter I wanted to go into: Mr. Wirth, will you tell me, you referred to the fact that you could tell the difference between not a fresh egg, but a processed egg from a non-processed egg, is that right?

A. Yes.

Q. On Case No. 1 involved here, you didn't handle those eggs? A. No, Mr. Bradway did.

(Testimony of C. A. Wirth.)

Q. But, on the other cases you personally handled them? A. Yes.

Q. What examination did you make of the eggs themselves to determine whether they were processed or not? A. Visual examination.

Q. And the feel of the egg in your hands?

A. A person that is experienced in eggs could tell you whether they are processed or not and there were no indications from the feel and the appearance—I am not sure whether I submitted them to the powder chemical test. I carry powder all the time, and if there is any doubt, we use it, but I can't recall whether we used the powder in this or not.

Q. I asked you to describe what you did?

A. I think it is the visual examination and handling and the feel of the eggs in your hands, and looking at them.

Q. Without the light, or with the light?

A. In the daylight, under the light.

Q. Under the daylight on ship?

A. Yes, and on the outside and in the plant of Nye and Nissen out on the platform. [1720

Q. In other words, it was observing the egg in your hand in the light and before the candle, and the appearance of the egg?

A. The feel of the egg in your hand.

Q. The feel of the egg in your hand and the appearance in some light, or in daylight, and before the candling, is that correct? A. Yes.

Q. And it is on the basis of what you felt or

(Testimony of C. A. Wirth.)

thought you felt and what you saw or thought you saw that you have expressed an opinion in this case that these eggs were not processed, is that correct?

A. Yes.

Q. There were no chemical analyses of any kind?

A. No, I made no chemical tests.

Q. At the time you were actualy doing this work, and in accordance with your efforts to have your notes as complete as possible, you never at any time made any note whether these were or were not processed, did you?

A. I don't know whether I placed that down or not. I would have to look at my notes.

(Witness looks through notes.)

The Court: Q. Your answer?

A. I have nothing in my notes indicating——

Mr. Faulkner: Q. When you prepared your report on November 4, "Report of Eggs Candled by Rynderson, Bradway and Wirth," you made no notation that these eggs were not processed, did you?

A. No, there is no notation on there.

Q. When you filled out this document which appears here, Defendants' Exhibit A-I for Identification, which you used to [1721] refresh your memory in respect to these transactions and which you testified were made on the dates they bear, November 3 and November 4, you made no notation——

A. There is no notation on there, I know.

Mr. Faulkner: That's all.

(Testimony of C. A. Wirth.)

Redirect Examination

Mr. Pratt: Q. Mr. Wirth, referring to this matter of processing, just state what is meant by processed eggs? A. By processing?

Q. Yes.

A. Eggs are dipped in a high grade mineral oil that is odorless, colorless and tasteless, immersed in it for a few seconds, take it out and allow it to drain and then are packed. This is an oil that is specially prepared for processing eggs.

Q. Done for the purpose of closing the pores of the shell so that the eggs will not deteriorate so rapidly? A. Yes.

Q. In examining these eggs and for the purpose of determining whether they had been processed, did you observe the flats and fillers to see whether there was any evidence of oil upon the flats and fillers?

A. In working along we noticed, as we were working along, there was no evidence of oil on the flats and fillers.

Q. When eggs are processed, does some portion of the oily surface go onto the flats and fillers?

A. It generally does.

Q. For what purpose is that observable?

A. Oh, over a year's time or two years' time.

Q. And there was no indication on the flats and fillers in these cases that they had been any oil on them?

Mr. Faulkner: We object to that; the flats and fillers are the best evidence.

(Testimony of C. A. Wirth.)

Mr. Pratt: It is perfectly obvious the flats and fillers in 45 cases of eggs cannot be produced.

Mr. Faulkner: But they went down there, officials went down there and examined them and testified concerning them.

The Court: Read the question.

(Question read.)

The Court: The objection is overruled. He may answer.

Mr. Faulkner: Exception.

The Witness: There was no indication.

Mr. Pratt: Q. In determining whether eggs have been processed when the eggs are, we will say, six or eight months old, is it easier or more difficult to determine whether they have been processed?

A. I don't think there is any special difference.

Q. If eggs have been processed within a period of two or three weeks, would it be any easier, to determine whether they had been processed, or perhaps you have already answered that?

A. Oh, it might be a little easier, but not a great deal of difference.

Q. Will the adherence of oil to the flats and fillers be more easily determined after the eggs had been processed within [1723] just a few weeks?

A. That is correct.

Q. In response to one of Mr. Faulkner's questions you used the word "mapes", did you not? What did you mean? A. That is a flat.

Q. That is a flat?

(Testimony of C. A. Wirth.)

A. That is made by a company known as the Mapes Company.

Q. M-a-p-e-s? A. Yes.

Q. Will you describe to the Court and Jury just how eggs are packed in the cases, describing the so-called flats and fillers and mapes?

A. On the bottom of the cases is placed one of these mapes. They are now commonly a cup made out of pressed fiber; made by Mapes Company. It used to be a flat piece of cardboard, old butcher paper, it looked like; and when this Mapes Company started making these others, they were so superior, in order to differentiate between the old flats and the new ones, they began calling the new ones "mapes." Now, everybody uses "mapes" entirely, or a product similar to mapes, not the straight old flat piece, which was just a piece of cardboard.

On top of the mape is placed a filler which is called cardboard, in sections, to put in 36 eggs; and each layer of eggs consists of 36 eggs. On top of that is placed another mape and another filler, and in that way, until you get five fillers and mapes on each side, and generally another mape is placed on top to protect the eggs. So, five times thirty-six would give you one hundred and eighty eggs in each case. [1724]

Q. With eggs arranged in this case, you could pick up a whole filler of thirty-six eggs at a time?

A. You put it down to the side and grab the filler and mape, and if you have done it before and know how, you pick up the whole thirty-six dozen.

(Testimony of C. A. Wirth.)

Q. You mean the thirty-six eggs?

A. Yes, thirty-six eggs, three dozen.

Q. Mr. Faulkner asked you how many stuck yolks you had found in your examination of these eggs.

Mr. Faulkner: I beg your pardon, I asked how many stuck yolks he had noted in his record he found.

Mr. Pratt: I beg your pardon?

Mr. Faulkner: And he said no.

Mr. Pratt: Q. So far as your record is concerned, you found a notation of no stuck yolks, is that right? A. That is right.

Q. From your notation that you made, were you able to determine, or are you now able to determine how many stuck yolks there were among these eggs you examined?

A. I don't know whether—I don't remember of any eggs being actually under the term that I would use of adhering or stuck yolks at the time of examination.

Q. You found spot rots, did you not?

A. Yes.

Q. Is there any connection between spot rots and stuck yolks? A. There definitely is.

Q. What is that connection?

A. The spot rot is the advanced [1725] stage of where yolk has stuck, and I designated it as "spot rots" in my notes.

Q. So that a spot rot has been a stuck yolk?

A. As a rule, that is true.

(Testimony of C. A. Wirth.)

Q. What does the presence of spot rot indicate so far as the evidence of eggs is concerned?

A. That they are old eggs.

Q. How old?

A. Oh, past four months at least.

Q. Why is that so?

A. Because the beginning of the spot rot is a stuck yolk, and a stuck yolk only comes after an egg is laid in a certain position for some length of time.

Q. And you placed that length of time as four months, or more?

A. As the type of spot rots that we found.

Q. If eggs were under proper refrigeration, would stuck yolks and consequent spot rots develop? A. Yes.

Q. That would be irrespective of refrigeration, then, would it? A. Yes.

Q. Now, referring to the mold which you discovered in these eggs, are you able to state how long a period of time would be required to develop the character of mold that you found in these eggs?

A. The type of mold we found inside these eggs is a type that takes a considerable length of time to develop.

Q. Well, how much time?

A. Oh, again, three to four months.

Mr. Pratt: I think that is all.

Recross Examination

Mr. Faulkner: Q. Mr. Wirth, the opinion you last expressed [1726] in connection with mold—if

(Testimony of C. A. Wirth.)

you knew or a fact from having been told by a man who observed the eggs in the icebox or chill box of the ship that the eggs he saw and observed in that chill box, that after the chill box broke down, that he would bring out the eggs and they would be fuzzy and moldy in part and some would be clean and nearly all of them were wet and damp, would you say that none of the eggs you saw had a mold that was caused——

Mr. Pratt: Just a minute, I object to that. That was not the testimony of the witness.

Mr. Faulkner: No, but you brought a witness named Brown who testified the icebox broke down, and that the eggs were wet and he took a towel and wiped them off, and some of the eggs had the appearance of good eggs and others were wet and damp and moldy and fuzzy and the icebox had broken down.

Mr. Pratt: I think again Mr. Faulkner mistakes the testimony of the witness Brown. I am not charging you with any——

Mr. Faulkner: Go right ahead. The Court heard the testimony and the Jury heard the testimony.

Mr. Pratt: I would like to examine the transcript to corroborate what I have said that Mr. Faulkner has not correctly quoted Brown's testimony.

Furthermore, the testimony of the witness Brown isn't to the effect that the refrigeration system broke down, and he said it was only down or up in

(Testimony of C. A. Wirth.)

temperature for a matter of a [1727] very few minutes and that does not support the statement that the icebox broke down.

The Court: Read the question.

(Question read.)

Mr. Faulkner: I think I am entitled to an answer.

The Court: The objection will be sustained.

Mr. Faulkner: May I ask the Court if that is because it is not the record?

The Court: I am not prepared to say whether it is or not. The question embodies testimony that this witness is incapable of knowing.

Mr. Faulkner: I am asking if his opinion as an expert would be modified if he knew that those eggs——

The Court: Reframe your question.

Mr. Faulkner: Q. Mr. Wirth, you saw a quantity of eggs down there at the plant of Nye & Nissen and on the ship and you have expressed an opinion here in court as to the period of time that it would take mold to form on those eggs, isn't that correct? A. Yes.

Q. You expressed the opinion that it would take four or five months in respect to those eggs, and I am asking you if your opinion would be the same if you knew that those eggs had been at some time in the plant of Nye & Nissen and had been delivered to a pier and then put in a chill box on a ship, that they remained in that chill box for a period of sixteen days, [1728] that during the

(Testimony of C. A. Wirth.)

period of time the chill box was not in proper working order and that the eggs when brought up from the chill box by the man in charge of them were damp, moldy and fuzzy in part, and some were not damp and were white and had the appearance of good eggs and that at the time he was bringing them up he knew that the chill box was not functioning properly and I will ask you if you knew those facts, if you would still express the opinion that it would take four or five months to form the mold on the eggs you observed?

Mr. Pratt: To that I object on the ground the hypothesis has not been established.

Mr. Faulkner: I don't have to establish the hypothesis because we have not had a chance to establish it until we put in a defense. I am predicating that on what we prove and on what the examination of Brown was; and in this instance as in every instance where Mr. Pratt discusses the testimony with me——

The Court: The Jury heard the testimony and in the interest of time I will allow him to answer.

The Witness: At the time of our examination we found that some eggs were moldy on the outside of the shell. Those were not counted when we listed as moldy eggs, because under the light they showed no mold inside the shell. The type of mold I refer to is mold inside the shell, what we call mold or black spots inside the shell. The white fuzzy mold on the outside [1729] is entirely a different type of mold.

(Testimony of C. A. Wirth.)

Mr. Faulkner: Q. When, however, you went to write your record, at the time you designated eggs that were moldy and eggs that had spots and you differentiated them on your own record at the time you prepared it? A. Yes.

Q. How many eggs did you find were moldy in the entire— A. The type of mold?

Q. I didn't ask you that. How many eggs did you designate in your book at the time you made your examination as moldy? In case 3—this is from memory, your Honor—you found twenty-three out of thirty-six?

A. I can read them separately.

The Court: Read them separately.

The Witness: A. None in case 1; none in case 2, 23 in case 3; 29 in case 4; 1 in case 5; 1 in case 6.

Mr. Faulkner: Q. How many in case 7?.

A. 7 in case 7.

Q. In all of those cases you listed the number of rots and spot rots, did you not? A. Yes.

Q. You testified, Mr. Wirth, that in connection with the matter of processing that you observed the fillers in these cases, is that right? A. Yes.

Q. And you observed that there was no evidence of oil on them? A. Yes.

Q. Why did you do that on this occasion?

A. Because I have seen the invoice and the invoice called for Medium Grade AA Processed.

Q. In other words, who showed you that invoice?

A. The steward of the ship.

Q. So that at the very time you were making

(Testimony of C. A. Wirth.)

this examination you had before you the invoice from Nye & Nissen, is that right?

A. I had seen a copy before we started the examination.

Q. And you saw the description of it?

A. Yes.

Q. Had you seen any of the records of the Terminal Cold Storage Company?

A. Not at that time.

Q. Before you came into court, did you see any records of the Terminal Cold Storage Company?

A. I have.

Q. Did you see a record of the Terminal Cold Storage Company in which they indicated on the face that these were plain eggs?

A. I have seen that record and I am not clear whether that record says plain or processed. The record is available.

Q. Mr. Wirth, is not this the typical method of preparing eggs for shipment—withdraw that question. How long after an egg is processed will it leave a residue of oil on a filler?

A. Oh, a considerable length of time.

Q. How long? A. Oh, a year or more.

Q. I don't mean how long the filler will retain the oil; how long will the egg give out oil to discolor the filler?

A. Oh, if it is not too heavily—that is, if the oil is fairly thin and not too thick and put on at the right temperature, and if you let it drain for, oh, sometimes if it drains [1731] for fifteen minutes it will leave practically no oil on the filler.

(Testimony of C. A. Wirth.)

Q. Isn't this the typical method of handling eggs by Nye & Nissen or any other producer, that the eggs in their packing plant are processed ordinarily in the packing plant of the egg establishment?

A. Eggs are processed in the packing plant, if that is your question.

Q. Isn't that correct?

A. They processed eggs in a packing plant?

Q. Yes, and then they put them in a case, is that right? A. Yes.

Q. That case, if the eggs have just been processed and they are put in that case, there is a likelihood there will be a residue of oil that would adhere to the mapes? A. That is correct.

Q. What do you call those cross things?

A. The fillers.

Q. The fillers. Now, it is the typical method of handling eggs that if those eggs are processed in the plant and are sent to a distributing point such as Nye & Nissen's plant in Los Angeles or San Francisco, that when they are then prepared for shipment they are candled in that plant and put in other cases?

A. That is the normal procedure.

Q. That is the normal procedure, and when they go into that second case after coming out of the place where they were processed, days before, and are transferred from one case to [1732] another, those eggs will not leave a residue of oil on the filler or the mape, will the—yes or no?

A. No, they are not on that——

(Testimony of C. A. Wirth.)

Q. So, if these eggs, following the typical method of handling eggs, of being processed at the plant of Nye & Nissen, taken down to their San Francisco plant and a day or two later, candled, maybe a day or two later, and put in another case; neither the mape nor filler will have any indication at all of whether the eggs were or were not processed, will they?

A. That is not the typical method of handling. The typical method of handling is candle the eggs and dip them and put them in cases in which they are going to be delivered to the ship.

Q. Do you know that is the method of Nye & Nissen? A. That is the common method.

Q. Where?

A. Supreme Egg Poultry in San Pedro, that puts out thousands of cases. That is their method. They are the largest handlers in the Los Angeles area of that type of business.

Q. Do you know the method of the Nye & Nissen plant? A. I do not.

Q. If the method I have described, that eggs were produced in Petaluma, put in a case, brought down to San Francisco in a truck, put in a refrigerator plant of Nye & Nissen and later candled to fill an order and placed in a box to fill that order, [1733] the mapes and fillers will not have at that time any indication that the eggs were or were not processed, is that correct?

A. That is on the mapes and fillers?

Q. Yes?

(Testimony of C. A. Wirth.)

A. Will not have any indication—that's right.

Q. When and where did you see the records of the Terminal Warehouse?

A. Oh, a few days—either the next day or two or three days later—I don't remember the exact date.

Q. Two or three days after what event?

A. After I examined the eggs.

Q. After this candling down there?

A. Yes.

Q. Who suggested you go to that warehouse to see the eggs?

A. Why, I recognized the Terminal stamp, that 3737 as being Terminal's refrigerating stamp; so I figured 3737 would necesarily be a load of Nye & Nissen in the Terminal refrigerator plant and found out it was.

Q. And you did that yourself without anyone directing you? A. That's right.

Mr. Faulkner: That's all.

The Court: We will take a recess for a few minutes.

(Recess.)

The Court: I thought you were through with witness.

Mr. Faulkner: That is the trouble with a recess; some additional thoughts occur during that time.

The Court: It is well to keep in mind the time. I have [1734] allowed the widest latitude; but we must go along.

Mr. Faulkner: Yes, your Honor.

(Testimony of C. A. Wirth.)

The Court: Proceed.

Mr. Faulkner: Q. Mr. Wirth, as I understand your testimony, you said a few moments ago that at the time you made this examination you had presented to you by someone a copy of the invoice that accompanied the eggs? A. Yes.

Q. And they showed AA Processed Medium eggs, is that right? A. Yes.

Q. And you were examining them, having in mind that invoice, were you? A. Certainly.

Q. Certainly? A. Yes.

Q. I don't hear the answer. A. Yes.

Q. At no time did you make any notation in your records whether the eggs were processed or not?

A. Not that I can find in any record.

Mr. Faulkner: That's all.

Redirect Examination

Mr. Pratt: Q. Mr. Wirth, you testified that the eggs might be AA eggs after they had been in storage some considerable length of time, several months, perhaps? A. Yes.

Q. And you have already testified that none of these eggs were AA eggs? A. Yes.

Q. Could any of these eggs that you observed have been AA eggs within a period of three or four weeks?

A. Do you mean previous to the time I examined them?

Q. Yes. A. No.

Q. Why not?